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Federal Communications Commission ("FCC")
Office of the Secretary
1919 M Street, N.W.
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RE: GN Docket 93-252 CMRS RULES
Further Notice of Proposed Rule Making

While the ongoing proceeding has a number of issues to address I thought it would be appropriate to raise an issue about site availability and site data format concerning FCC applications.

In the past the FCC has operated under three sets of rules concerning sites, each corresponding to three Bureaus at the FCC: Common Carrier (CC), Mass Media (MM), and Private Radio (PR). Since this proposed Rule Making will somewhat diminish the traditional lines established between the three FCC Bureaus and create a fourth animal (CMRS) I thought it timely to address the discrepancies in Bureau site availability policies.

It is a fact that the site availability requirements for each Bureau are different. The standard of care is found to be descending. The Mass Media Bureau has a very stringent standard concerning site availability. In this Bureau site availability is generally documented through a letter of intent. In some cases, a applicant or his representative may testify that site availability rests on verbal permission given by the site owner (tower, rooftop or undeveloped land). All of the above methods have past scrutiny with the FCC in numerous proceedings. The Mass Media Bureau also has a one second rule. The coordinates provided by the applicant must be within one second of accuracy otherwise the application may be dismissed by the FCC.

In the Common Carrier Bureau, the rule seems to be less stringent. The FCC is insistent on enforcing the site availability rule. However, in some cases, the FCC has allowed cellular radio applicants to amend their site location when it is found to be in error. The Commission seems reluctant to dismiss an otherwise bona fide applicant exclusively for faulty site information as regards cellular radio while in Mass Media it is a sin beyond repair.

In the Private Radio Bureau, the assumption is that the applicant is building an "in-house" operation and the issue of site availability is understood to be moot. The logic here being that an "in-house" system implies site availability. As we know, this is less often the case.

Today we know that the underlying assumptions behind these policies are no longer applicable for many Private Radio filings. Some adjustment is called for given the nature of current filings Before the FCC and what we can expect to arise in the future.

It seems sensible to me that all applications filed before the FCC under the guise of CMRS, however defined, should meet a site availability criteria similar to what the FCC has required in the past for Common Carrier filings. This policy would alleviate a number of speculative filings by raising the cost of filing.

My past experience indicates a substantial abuse of the Private Radio rules concerning site availability. Various entities are filing SMR applications on sites where their has been no contact whatsoever between the applicant and the property owner, be they a tower, rooftop or land owner. The applicant has filed there simply to meet the FCC spacing rules for the particular service applied for. This practice has not been in the public's best interest. The FCC is leaving to bear an issue which could cause the Agency considerably consternation in the future. The FCC does not need irate land owners or existing facility owners calling or writing the Commission to lodge complaints about some party wanting to build a tower in their back yard or place an antenna on their tower or roof without prior consent. The facilities applied for under the CMRS rules are clearly for commercial purposes by definition. Why not make the applicants for such properties pay the normal price of entry?

The speculative nature of a large number of filings, given the growth in the wireless industry, raises a number of issues. The first is financial viability, the second, intent to construct, and the third, bogus FAA 74-60 forms which are filed with the FAA by prospective FCC applicants to meet Commission rules. A look at a number of these proposed sites indicates a level of engineering discretion to which little or no earnest intent can be readily attached.

The first two issues the Commission has spent considerable time and resources on. We now have auctions for FCC licenses. However, the third issue should be addressed in this proceeding. The FAA must process, by way of FAA form 74-60, most proposed antenna sites used in FCC applications. Often the proposed sites are near airports or other areas where tower construction or antenna mountings are prohibited due to FAA rules, zoning laws or tower loading requirements. The abuse of this site selection process is at this time blatant. "Pin the Donkey" engineering is a thing of the past. Willey nilley sites are causing too many bottlenecks of mounting paper at both the FAA and the FCC.

The FCC should identify a clear set of rules concerning site availability for all CMRS filings. I believe some sort of letter of intent or option should be required to deter speculative applicants. By making the entry cost to file applications before the FCC more expensive, applicants will have to think harder before committing funds to a speculative project. Several years ago the Mass Media Bureau addressed this issue in a policy change. Prospective applicants had to account for tower construction costs in their respective financial qualifications. This policy discourage a number of parties from filing applications where there was no existing antenna mounting facility available for their filing. Tower construction costs can easily exceed $50,000 in a number of applications. The cost do add up when you consider the number of sites typically deployed in CMRS configurations.

Now that we have auctions before us, what impact will this new licensing mechanism have on the site availability issue. Will the FCC require some sort of standard of care for successful auction bidders in the way of a letter of intent, option or lease prior to engineering filings? Or will the FCC rely exclusively on the slated build out requirements stipulated in the rules? And as concerns those rules, there are large discrepancies in how population is quantitatively calculated. Does the FCC have any thoughts on quantitative measurement standards for population counts?

On another front, the FCC would do well to merge the site data requirements on all its forms dealing with terrestrial based RF stations. Past experience on my part indicates that three types or "sets" of data would meet the FCC's technical requirements. The number of antenna mounting scenarios is limited. It is clear that there are tower sites, rooftop sites, monopole sites and mountaintop sites (with any of the above structural supports) and land sites where new tower construction is proposed. Why not have all three Bureaus of the FCC agree on three or so data sets to be filed on all FCC forms. Currently, each Bureau operates under different site data requirements. A little cross talk between engineering departments could consolidate these requirements. This move would benefit FCC staffers, communication law firms, consulting engineers and site companies. The move would also be consistent with the Paper Reduction Act and the FCC's intention to allow applicants to file electronically. May I suggest that the above average terrain (AAT) of any given site be included in the site data set. The figure seems germain to the value of a given site under a number of service rules and would prove useful for site evaluation purposes for site location, appraisel and management companies.

Yours Truly

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